

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5307 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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ADUBHA MALSING SOLANKI DARBAR

Versus

STATE OF GUJARAT

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Appearance:

MS JAYSHREE C BHATT for Petitioner

Mr.SJ DAVE, A.G.P. for Respondents No. 1, 2, 3

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CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 03/09/97

ORAL JUDGEMENT

1. By way of this petition under Article 226 of the Constitution of India the petitioner - detenu has brought under challenge the detention order dated 1st May 1996 (implemented on 10th April 1997) rendered by respondent No.2 u/s. 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (Act No.16 of 1985) (for short 'the PASA Act').

2. The grounds on which the impugned order of detention has been passed appear at Annexure : B to the petition. They inter-alia indicate that the petitioner had been indulging in criminal and anti-social activities of committing house-breaking and theft of movables and ornaments and creating atmosphere of fear. The grounds of detention inter-alia show five registered cases in Detroj Police Station as particularised below :

Sr.

No. CR.No. Registered on Under Sections

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1. 90/93 11.8.1993 457,380 IPC

2. 116/93 8.10.1993 380 IPC

3. 10/94 28.1.1994 380 IPC

4. 52/94 31.5.1994 379 IPC

5. 76/94 10.9.1994 380,457 IPC

3. It has been recited that the detenu's anti-social activity tends to obstruct maintenance of public order and in support of such conclusion statements of eight witnesses have been relied upon. They speak about the incidents of last part of 1995 and first part of 1996, as the case may be, indicating threatening and assaulting the concerned witnesses in public and committing theft resulting in fear in the mind of people.

4. It is on the aforesaid incidents that the detaining authority has passed the impugned order of detention while also relying upon the aforesaid cases lodged against the petitioner. The petitioner has been branded as a 'dangerous person' within the meaning of Section 2(c) of the PASA Act.

5. The impugned order of detention has been challenged, inter-alia, on the ground of delay in passing the order appearing in Para : 9 of the petition. It reads as under :

"The petitioner says and submits that the

last offence i.e. CR No.76/94 was registered on 10.9.1994 while detention order passed on 1.5.1996. That is, after 19 months. Thus delay in passing detention order i.e. after lapse of 19

months from the date of registration of the last offence. In the peculiar circumstances the petitioner deserves to be released from illegal detention forthwith."

This is a clear case of gross delay and the last registered incident is stated to have occurred on 10.9.94. It has, therefore, been the case of the petitioner that there is total absence of live link between the dates of incidents which formed the basis of impugned order of detention and the date on which the detention order has been passed. Thus, on account of vice of delay the subjective satisfaction arrived at by the detaining authority stood vitiated. In support of this submission reliance has been placed on a decision of this Court rendered on 27.12.1996 (Coram : N.N.Mathur, J.) in Special Civil Application No.8631 of 1996. After making a brief resume of the decisions of the Apex Court this Court observed as under :

"This unexplained delay makes a ground of detention not proximate vitiating the order of detention itself."

This Court also observed that it would not be necessary to state the facts with respect to the unregistered cases. The Court, therefore, preferred to adopt the course adopted by the Supreme Court in the case of Jagan Nath Biswas V/s. The State of West Bengal, reported in AIR 1975 SC 1515, Anand Prakash V/s. State of U.P., reported in AIR 1990 SC 516 and Pradeep Nilkanth V/s. S. Ramamurthy, reported in 1993 (2) Suppl. SCC 61. This Court, therefore, quashed the order of detention in that case.

6. No Affidavit-in-Reply has been filed. It has, however, been submitted that the passage of time in between the date of unregistered cases and the date of impugned order of detention is not so long as to snap the live link between such incidents and the date of the impugned detention.

7. In the facts and circumstances of the present case and bearing in mind the decision of the Division Bench of this Court (Coram : S.M.Soni & S.D.Shah, JJ., Per Soni, J.) in Special Criminal Application No. 1060 of 1993 in respect of unregistered cases the impugned order of detention shall have to be quashed on account of explained delay.

8. There are other grounds of challenge levelled against the impugned order of detention. However, in view of the fact that the petitioner would succeed on the ground of delay, it is not necessary to deal with the other grounds. Hence, following order is passed :

The impugned order of detention is hereby quashed and set aside. The petitioner - detenu - Abubha Malsing Solanki shall be forthwith set at liberty, if he is not required to be detained in any other case. Rule made absolute accordingly.

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